

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JAMES,

Defendant-Appellant.

UNPUBLISHED

July 15, 2004

No. 246217

Wayne Circuit Court

LC No. 01-013237

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of attempted possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v) and MCL 750.92, and possession of marijuana, MCL 333.7403(2)(d). He was sentenced to two years' probation. He now appeals and we affirm.

The arresting officer testified that he saw defendant and others standing on a street corner. Defendant was drinking a beer, so the officer approached him. Defendant took his hand out of his pocket and a small plastic envelope fell to the ground. That envelope proved to contain cocaine. A subsequent search of defendant yielded a packet containing marijuana.

Defendant admitted that he had marijuana in his possession, but disclaimed any knowledge or possession of the cocaine. Defendant gave a different version of events at trial. First, he testified that he had just approached a vehicle with three individuals in it and they agreed to give him a ride and he had just gotten into the vehicle when the police arrived. According to defendant, the officers had them get out of the vehicle. Thereafter, defendant was arrested, with the arresting officer stating that drugs were found in the car and that the drugs belonged to defendant. Defendant told the officer that the drugs were not his. Defendant claimed at trial he did not know where the drugs came from as he never saw them before trial.

Following trial, the three officers who testified against defendant, as well as several other officers not involved in this case, were indicted by a federal grand jury alleging, among other things, that the officers would engage in illegal searches and detentions, falsifying police reports, retaining money, drugs and firearms seized from suspects, the planting of drugs, money and firearms when none were found during a search, and unlawful force. None of the allegations involve the case at bar or defendant.

Defendant moved for a new trial on the basis of newly discovered evidence. Although defendant acknowledged that none of the federal allegations involved this case, he argues that the indictment reflects a pattern of conduct which casts doubt upon the credibility of all of the officers involved in this case and raises the specter of evidence having been planted in this case as well.

The standard for reviewing a claim of newly discovered evidence was discussed in *People v Davis*, 199 Mich App 502, 515-516; 503 NW2d 457 (1993):

A trial court's ruling on a motion for a new trial based upon newly discovered evidence will not be reversed absent an abuse of discretion. *People v Sharbnow*, 174 Mich App 94, 104; 435 NW2d 772 (1989); *People v Beckley*, 161 Mich App 120, 130; 409 NW2d 759 (1987). To merit a new trial on the basis of newly discovered evidence, a defendant must show that the evidence (1) is newly discovered, (2) is not merely cumulative, (3) would probably have caused a different result, and (4) was not discoverable and producible at trial with reasonable diligence. *Sharbnow, supra*, 104; *People v Stricklin*, 162 Mich App 623, 631-632; 413 NW2d 457 (1987). Newly discovered evidence is not ground for a new trial where it would merely be used for impeachment purposes. *Sharbnow, supra*, 104; *Stricklin, supra*, 632.

In the case at bar, the newly discovered evidence—the indictment of the officers—would potentially have impacted on their credibility (assuming that such evidence would even be admissible), but would not have established defendant's innocence. That is, the proffered evidence does not establish that the officers planted the evidence in the case at bar, only that they have been accused of doing so in other cases. Therefore, this evidence would only serve to impeach the officers' credibility. As such, it cannot provide the basis for a new trial based upon newly discovered evidence. *Davis, supra* at 516.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens